



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

CALFEE HALTER & GRISWOLD LLP  
800 SUPERIOR AVENUE  
SUITE 1400  
CLEVELAND OH 44114

**COPY MAILED**

MAR 03 2008

**OFFICE OF PETITIONS**

In re Application of :  
Cubukcu, et al. :  
Application No. 10/612,230 : ON PETITION  
Filed: July 2, 2003 :  
Attorney Docket No. 21980-04012 :

This is a decision on the "PETITION UNDER C.F.R. §1.181 TO WAIVE REQUIREMENT FOR NEW DECLARATION", filed January 2, 2008, which is properly treated as a petition under 37 C.F.R. §1.183.

The petition under 37 C.F.R. §1.183 is **DISMISSED**.

The Office mailed a final Office action on October 2, 2007. The final Office action required a new oath or declaration. The Office action stated that the declaration was defective because it did not state that the person making the oath or declaration believes the named inventor or inventors to be the original inventor or inventors of the subject matter which is claimed and for which a patent is sought.

Applicants have filed the instant petition, seeking waiver of the requirement for a new declaration. Applicants request the Commissioner to determine that the declaration satisfies all requirements of 37 C.F.R. §1.63(a)(4) and 35 U.S.C. 115.

37 C.F.R. 1.183 states:


In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h) (emphasis added).

Furthermore, 35 U.S.C. 115 states that "the applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent". 35 U.S.C. 115 is a statutory requirement and its requirements can not be waived.

The \$400 petition filing fee has been charged to Deposit Account No. 03-0172.

Applicants are reminded that the time period for filing a proper response to the October 2, 2007 final Office action continues to run.

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in black ink, appearing to read "Cliff Congo", with a stylized flourish at the end.

Cliff Congo  
Petitions Attorney  
Office of Petitions